



[Billing Code 1610-02-P]

GOVERNMENT ACCOUNTABILITY OFFICE

4 CFR Part 81

**Public Availability of Government Accountability Office
Records**

AGENCY: Government Accountability Office.

ACTION: Final rule.

SUMMARY: These revisions clarify procedures to obtain Government Accountability Office (GAO) records. Specifically, the revisions add procedures for requesting records of GAO's Office of Inspector General. The revisions also clarify that documents prepared by GAO or GAO's Office of Inspector General for referral to another agency for law enforcement purposes are not subject to the regulations in this part. The previous regulatory language on this point was imprecise.

DATES: This rule is effective as of [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: John A. Bielec, Assistant General Counsel, bielecj@gao.gov.

SUPPLEMENTARY INFORMATION: GAO is amending 4 CFR 81.2 by specifically providing that GAO's Office of Inspector General (OIG) will process any requests under this part for OIG records. The OIG, which was established by statute in

2008, audits and investigates matters related to GAO's operations. The OIG executes its responsibilities independently of and free from interference or control by any other office or body within GAO. In keeping with and to best preserve this independence, the OIG itself should process requests for its records. However, when the OIG receives a request for records that originated in GAO, the OIG will refer the requester to GAO. These revisions provide that with respect to any request for OIG records, other than records that originated in GAO, throughout this part the term "Counsel to the Inspector General" would be substituted for "Chief Quality Officer" and the term "Inspector General" would be substituted for "Comptroller General."

In addition, § 81.6(g) is amended to clarify that documents prepared by GAO for referral to another agency for law enforcement purposes are exempt from the procedures in this part. Section 81.6(g) previously provided that records that GAO has already provided to another agency for law enforcement purposes are exempt. However, § 81.6(g) did not specifically address requests for records that GAO, including the OIG, created for referral to another agency for law enforcement purposes, but has not yet provided to

another agency. For instance, during an investigation into possible criminal activity, the GAO OIG creates documents that may be forwarded to another agency for law enforcement purposes at the conclusion of the OIG's investigation.

Section 81.6(g) was unclear as to whether such records, which have not yet been forwarded to another agency, would be subject to this part if requested before the conclusion of the investigation. These changes clarify that records compiled for referral to another agency for law enforcement purposes are exempt from this part.

GAO is not subject to the Administrative Procedure Act and accordingly is not required by law to seek comments before issuing a final rule. Application of the Administrative Procedure Act to GAO is not to be inferred from GAO's invitation of comments on the proposed rule.

Nevertheless, GAO published a proposed rule regarding these changes and invited comments at 82 FR 37545 (August 11, 2017). GAO received two comments on the proposed rule. Neither comment specifically addressed the proposed changes to this part. As a result, the final rule does not reflect these comments.

GAO added a sentence to the final version of § 81.2 that did not appear in the proposed version. This sentence clarifies that when the OIG receives a request for records that originated in GAO, the OIG will refer the requester to GAO. The final rule otherwise does not differ substantively from the proposed rule.

List of Subjects in 4 CFR Part 81

Administrative practice and procedure, Archives and records, Freedom of information, Requests for records.

For the reasons stated in the preamble, the Government Accountability Office amends 4 CFR part 81 as follows:

PART 81--PUBLIC AVAILABILITY OF GOVERNMENT ACCOUNTABILITY OFFICE RECORDS

1. The authority citation for part 81 continues to read as follows:

Authority: 31 U.S.C. 711.

2. Amend §81.2 by designating the undesignated paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§81.2 Administration.

* * * * *

(b) Requests for records of GAO's Office of Inspector General (OIG) shall be processed by the Counsel to the Inspector General in accordance with this part. The Inspector General shall decide any administrative appeals of decisions of the Counsel to the Inspector General concerning such requests. However, if any of the requested records of the OIG originated in GAO, the Counsel to the Inspector General shall refer the requester to GAO's Chief Quality Officer for processing of the request for those records in accordance with this part. With regard to any public request to inspect or copy records of the OIG, other than records that originated in GAO, in this part the term "Counsel to the Inspector General" is to be substituted for "Chief Quality Officer" and the term "Inspector General" is to be substituted for "Comptroller General". All requests to inspect or obtain a copy of an identifiable record of the OIG must be submitted in writing to the Counsel to the Inspector General, U.S. Government Accountability Office, Suite 1808, 441 G Street, NW., Washington, DC 20548 or emailed to OIGRecordsRequest@gao.gov.

3. Amend §81.6 by revising paragraph (g) to read as follows:

§81.6 Records which may be exempt from disclosure.

* * * * *

(g) Records compiled for law enforcement purposes that originate in another agency, or records prepared for referral to and/or provided by GAO or the OIG to another agency for law enforcement purposes.

* * * * *

Dated November 3, 2017.

Susan A. Poling,
General Counsel, Government Accountability Office.
[FR Doc. 2017-24340 Filed: 11/7/2017 8:45 am; Publication Date: 11/8/2017]